

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
BALLARD ELKS LODGE No. 826,)
Appellant,)
CITY OF SEATTLE,)
Respondent.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY and)
SLADE GORTON, ATTORNEY)
GENERAL,)
Intervenors.)

SHB No. 22

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, a Request for Review of the approval, with a condition, of a Substantial Development Permit by the City of Seattle, came before all members of the Shorelines Hearings Board, (Ralph A. Beswick sitting for Bert L. Cole and Gordon Y. Ericksen sitting for Robert F. Hintz) at a formal hearing in the King County Courthouse, Seattle, at 9:30 a.m. on September 25, 1972.

Appellant appeared through Charles Mullavey; respondent through Georg

1 Crandall, Assistant Corporation Counsel, and intervenor through Robert
2 V. Jensen, Assistant Attorney General. Eugene Barker, court reporter,
3 recorded the proceedings.

4 From the sworn testimony heard, exhibits considered and assisted
5 by arguments of counsel, the Shorelines Hearings Board makes these

6 FINDINGS OF FACT

7 I.

8 Appellant is the owner of a parcel of land in Seattle, King County,
9 bounded on the east by Seaview Avenue Northwest and extending on the west
10 to the northeast boundary of Salmon Bay Waterway which connects Shilshole
11 Bay with the entrance to the Lake Washington Ship Canal. At all stages of
12 the tide, a portion of the parcel is covered by water.

3 II.

14 Desiring to construct an assembly room, swimming pool, gymnasium,
15 restaurant and cocktail lounge in the western portion of its parcel,
16 appellant made application to the City of Seattle for a Substantial
17 Development Permit under the Shoreline Management Act. The application,
18 calling for over water construction to the pier head line, was denied
19 by the City. A new application, calling for construction partly on
20 unwetted land and partly over water to a point about 75 feet east of
21 the pier head line, was approved in part by the City with a condition
22 that all construction be on unwetted land. Appellant, objecting to the
23 condition imposed by the City, brought this Request for Review.

24 III.

Critical to any consideration of this matter are these two facts:

- 26 (1) For a distance of about 0.6 nautical mile southeastward from

the southern boat entrance to the Port of Seattle Shilshole Marina, said distance including appellant's parcel, the northeastern boundary of the dredged waterway borders on a man-altered, artificial shoreline. The natural shoreline disappeared decades ago as indiscriminate and irregular filling and bulkheading took place on the various parcels of land composing the eastern boundary of the channel.

(2) Over the years, uses of this land developed along many varied lines. These uses were put to the shorelands long before adoption of the Shoreline Management Act. Most of them are not water dependent uses as defined in the Shoreline Management Act. They include a large multi-story condominium, lying north of appellant's parcel, and various restaurants, cocktail lounges and boat sales rooms, lying south of appellant's parcel. Only one of the present uses of this 0.6 nautical mile shoreland--a boat rental enterprise--would qualify as a water dependent use.

IV.

Restricting appellant to construction of its proposed clubhouse to that portion of its property not wetted by tidal waters would (a) deprive appellant of any practical use of a portion of its unwetted property; (b) adversely effect its ability to provide off street parking for members and guests, and (c) force construction considerably eastward of buildings already in use on properties adjacent to or near appellant's parcel.

V.

Permitting appellant to construct a building partly over water would adversely effect rights of navigation only to casual use by row

1 boats, canoes and other shallow draft craft operating close to shore in
2 a little used shoal water area. The shadow line cast by appellant's
3 structure would block to a minimal degree the view of the ship channel
4 from homes on a hill east of Seaview Avenue but would not intervere with
5 their territorial view of Puget Sound and the Olympic Mountains.
6 Construction of a building partly over water would not have any
7 significant adverse effect on public health, on the shoreline, on wild
8 life or aquatic life and would minimize so far as practical any resultant
9 damage to the shoreline environment and interference with the public use
10 of the water. Appellant has a membership of 3,500 persons and its
11 proposed construction, therefore, would provide an opportunity for
12 substantial numbers of people to enjoy this particular shoreline.

3 VI.

14 A line extended 151.5 degrees true from the southwest corner of the
15 L-shaped pier at the southern end of the Port of Seattle Shilshole
16 Marina would confine to the north and east all present land fills and
17 buildings on properties for a distance of 0.6 nautical mile southeastward
18 along the eastern shore of the ship channel.

19 VII.

20 Appellant has had a substantial sign in place on the property for
21 several years advising the public of the proposed construction and
22 neither this advertisement on the site nor publication of the notices
23 required by law resulted in any public opposition to the permit.

24 VIII.

25 The lack of financing prevented appellant from joining adjacent
26 and nearby property owners in construction and uses of the shoreline

1 which now are discouraged, if not barred, by a close interpretation of
2 the Shoreline Management Act.

3 From these Findings of Fact the Shorelines Hearings Board comes
4 to these

5 CONCLUSIONS

6 I.

7 From a standpoint of realism, the damage was done years ago to the
8 eastern shoreline of the ship channel along Shilshole Bay and the
9 entrance to the Lake Washington Ship Canal. The administration of the
10 Shoreline Management Act in this area must be done, therefore, with a
11 practical regard for the realities of what happened to this shoreline
12 prior to the adoption of the Shoreline Management Act.

13 II.

14 We feel the City of Seattle, in granting a conditioned Substantial
15 Development Permit to appellant was aware of the realities in this area
16 and we commend the City for its practical approach.

17 III.

18 However, we feel that the City's condition that the clubhouse must
19 be limited to unwetted land does not fully recognize the realities of
20 the channel's northeastern shore. To follow in the future this "dry land
21 only" rule would mean that adjacent property owners and other nearby
22 property owners could take advantage of the irregularly filled shoreland
23 and could build structures protruding further to the southwest than the
24 City's condition to appellant would permit appellant to build. This, we
25 feel, would be unfair to appellant. That appellant acquired a parcel
26 which has not been artificially filled to the west quite as much as others

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 adjacent and nearby, ought not to be the deciding factor in setting the
2 western limit of appellant's construction.

3 IV.

4 We feel that the realities of construction, both existing and
5 that which may be permitted in the future, will be more clearly defined
6 and a practical approach of the principles of the Shoreline Management
7 Act in this area will be achieved more equitably if a no-further-west
8 construction line is created as described in our Finding of Fact VI.
9 This line, as applied to appellant's property, would require appellant
10 to retreat slightly to the east when compared with appellant's
11 application for a Substantial Development Permit, but will be an advance
12 to the west, permitting a minimal over the water construction, when
13 compared with the City's condition in granting the Substantial Develop-
14 ment Permit. The spirit of the City's condition would be recognized by
15 such a line and the realities of the eastern shore would be given a more
16 logical symmetry.

17 Therefore, the Shorelines Hearings Board issues this

18 ORDER

19 The Request for Review is sustained in part and Substantial
20 Development Permit No. 72 is remanded to the City of Seattle for
21 amendment of its condition to permit over the water construction on
22 piling southwestward only to an extension of a line drawn 151.5 degrees
23 true from the southwestern corner of the L-shaped pier at the southern
24 end of the Port of Seattle Shilshole Marina.

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26
27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

DONE at Olympia, Washington this 5th day of December, 1972.

SHORELINES HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

Ralph A. Beswick
RALPH A. BESWICK, Member

Matthew W. Hill
MATTHEW W. HILL, Member

Gordon Y. Ericksen
GORDON Y. ERICKSEN, Member

James T. Sheehy
JAMES T. SHEEHY, Member